2022 LiveLaw (SC) 904

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
DR. DHANANJAYA Y. CHANDRACHUD; J., HIMA KOHLI; J.
October 31, 2022
Criminal Appeal No 1865 of 2022 (Arising out of SLP(Crl) No 8768 of 2022)
Kiran Tomar & Ors *versus* **State of Uttar Pradesh & Anr.**

Code of Criminal Procedure, 1973; Section 125 - Income tax returns do not necessarily furnish an accurate guide of the real income. Particularly, when parties are engaged in a matrimonial conflict, there is a tendency to underestimate income. Hence, it is for the Family Court to determine on a holistic assessment of the evidence what would be the real income. *(Para 10)*

(Arising out of impugned final judgment and order dated 10-08-2022 in CRLR No. 1670/2022 passed by the High Court of Judicature at Allahabad)

For Petitioner(s) Mr. Ravi Prakash Mehrotra, Sr. Adv. Mr. Nagendra Singh, Adv. Ms. Akansha, Adv. Mr Ashish Pandey, Adv. Mr Sanjay Gupta, Adv. Mr Prateek Rai, Adv. Mr. Akash Choudhary, Adv. Dr. Sushil Balwada, AOR

For Respondent(s) Ms. Priya Hingorani, Sr. Adv. Mr. Sunny Choudhary, AOR Mr. Manoj Kumar, Adv. Mr. Abhimanyu Singh, Adv. Ms. Monika Rai, Adv. Mr. Sarvesh Singh Baghel, AOR

O R D E R

1 Leave granted.

2 The appeal arises from a judgment of a Single Judge of the High Court of Judicature at Allahabad dated 10 August 2022 in Criminal Revision No 1670 of 2022.

3 The Additional Principal Judge of the Family Court at District Gautambudh Nagar, by an order dated 11 March 2022, allowed Miscellaneous Case No 197 of 2016 instituted by the appellants under Section 125 of the Code of Criminal Procedure 1973 and directed the second respondent to pay maintenance at the rate of Rs 20,000 per month to the first appellant and Rs 15,000 each to the second and third appellants, who are daughters of the first appellant and the second respondent.

4 While setting aside the judgment of the Family Court, the High Court has encapsulated its entire reasoning in one paragraph, which is extracted below:

"Heard learned counsel for the parties and perused the material on record. Perusal of the impugned Judgement and order shows that the learned Family Court has recorded the findings that the revisionist is earning Rs. 2 lacs per month, on the other hand, the Income Tax Return (I.T.R.) filed by the revisionist shows that he is earning Rs. 4.5 lacs per annum. Furthermore, this Court failed to appreciate that on what basis the learned Family Court has recorded the findings that the income of revisionist is Rs. 2 lacs per month, when there is nothing on record to demonstrate the same."

5 We have heard Mr Ravi Prakash Mehrotra, senior counsel appearing on behalf of the appellants and Ms Priya Hingorani, senior counsel appearing on behalf of the second respondent.

6 The judgment of the High Court does not reflect a correct appreciation of the reasons which weighed with the Family Court. The Family Court, inter alia, noted that:

(i) In the proceedings which he instituted under the Guardians and Wards Act 1890, the second respondent specifically averred that he is "a respectable member of his family and has good resources";

(ii) It is an admitted position that the second respondent works as a contractor;

(iii) While the second respondent claimed in the above proceeding that the first appellant was unable to maintain the minor children, he had filed documentary evidence about his educational qualifications for demonstrating his capability to raise the children;

(iv) Though the second respondent is in business with his father, he failed to disclose his income in the property statement; and

(v) The second respondent admitted that he has a rental house whose rent is paid by his father.

7 On the above premises, the Family Court came to the conclusion that the second respondent had concealed the income which he earns in the business which he carries on together with his father from the court.

8 The Family Court has also dealt with the statement of the first appellant that she was a partner in a company (stated to belong to her brother) and had an amount of Rs 12,000 in the bank account. The Family Court observed that the first appellant is not working on a post in the company and, as a matter of fact, her expenses including on the children is borne by her parents, brother and sister. In this backdrop, the Family Court issued directions for the payment of maintenance in its order dated 11 March 2022.

9 The High Court ought to have been aware of the parameters of the revisional jurisdiction. The extract from the judgment which has been set out above indicates that the High Court was of the view that:

(i) Whereas the first appellant stated that the second respondent earns an amount of Rs Two Lakhs per month, his income tax return indicates that the second respondent is earning Rs 4.5 Lakhs per annum; and

(ii) The Family Court had not indicated the basis on which it had assessed the income of the second respondent at Rs Two Lakhs per month.

10 On the first aspect, it is well-settled that income tax returns do not necessarily furnish an accurate guide of the real income. Particularly, when parties are engaged in a matrimonial conflict, there is a tendency to underestimate income. Hence, it is for the Family Court to determine on a holistic assessment of the evidence what would be the real income of the second respondent so as to enable the appellants to live in a condition commensurate with the status to which they were accustomed during the time when they were staying together. The two children are aged 17 and 15 years, respectively, and their needs have to be duly met.

11 In this view of the matter, the High Court was not justified in setting aside the order of the Family Court on the basis of the reasoning which has been extracted above in the earlier part of this order.

12 At the same time, having heard submissions of both the parties, we are of the view that it would be appropriate to restore the Criminal Revision, namely, Criminal Revision No 1670 of 2022 to the file of the High Court of Judicature at Allahabad for consideration afresh. In order to facilitate this exercise, the impugned order of the High Court dated 10 August 2022 is set aside and the Criminal Revision is restored to the file of the High Court, conditional with the directions issued hereafter.

13 By the interim order of this Court dated 30 September 2022, this Court, while issuing notice, directed the second respondent to pay the arrears of maintenance computed in accordance with the order of 11 March 2022 of the Family Court to the appellants before the next date of listing. The petition was directed to be listed on 31 October 2022.

14 During the course of the hearing, Mr Ravi Prakash Mehrotra, senior counsel, has submitted a statement indicating that the second respondent has paid an amount of Rs 1,00,000 to the first appellant, Rs 1,50,000 to the second appellant and an amount of Rs 1,00,000 to the third respondent on 21 October 2022, 26 October 2022 and 27 October 2022 towards arrears of maintenance. The statement tendered to this Court indicates that from 5 July 2016 until 31 October 2022, an amount of Rs 14.20 lakhs, Rs 10.40 lakhs and Rs 9.90 lakhs is due and outstanding to the three appellants respectively.

15 The second respondent has shown scant regard to the order of this Court by failing to comply with the interim direction. Ordinarily, we would have been inclined to pass a coercive order against the second respondent, but, in order to furnish a further opportunity to him to comply, we are passing a conditional order.

16 The order is as follows:

(i) The second respondent shall, in compliance with the interim order dated 30 September 2022, pay the entire arrears of maintenance payable to the appellants in terms of the order dated 11 March 2022 of the Additional Principal Judge, Family Court, District Gautambudh Nagar in Miscellaneous Case No 196 of 2016 on or before 31 December 2022;

(ii) Conditional on compliance with (i) above, the impugned order of the High Court dated 10 August 2022 is set aside and Criminal Revision No 1670 of 2022 is restored to the file of the High Court;

(iii) In the event that the second respondent fails to comply with the above direction for the payment of the arrears of maintenance by 31 December 2022, the Criminal Revision Instituted by the second respondent before the High Court of Judicature at Allahabad, being Criminal Revision No 1670 of 2022, shall stand dismissed;

(iv) The payments which the second respondent has been directed to make to the appellants shall abide by the final orders as may be passed by the High Court in the pending revisional proceedings; and

(v) During the pendency of the proceedings before the High Court, the second respondent shall continue to pay the amount, as directed by the Family Court, from month to month on or before the seventh day of each succeeding month commencing from 7 November 2022, subject to such further orders as may be passed by the High Court.

17 Conditional on compliance with the above directions, the Criminal Revision shall be heard on merits and may be expedited by the High Court.

18 The appeal is allowed in the above terms.

19 Pending application, if any, stands disposed of.